

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #5	CCRB Case #: 201501773	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/12/2015 11:40 PM	Location of Incident: § 87(2)(b)	Precinct: 113	18 Mo. SOL 9/12/2016	EO SOL 9/12/2016	
Date/Time CV Reported Fri, 03/13/2015 12:14 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 03/13/2015 12:14 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Stephen Faber	03723	941721	113 PCT
2. POM Kenneth Sepulveda	22097	947482	113 PCT
3. POM Timothy Rizzo	07939	939325	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Algerio	07322	944312	113 PCT
2. POM Kraig Hunter	23684	933861	113 PCT
3. POM Derrick Coleman	22912	950219	113 PCT
4. POM Charles Lovelock	22435	942082	113 PCT
5. POM James Gherardi	03975	944592	113 PCT
6. POM Anthony Canale	15509	944407	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Stephen Faber	Abuse: Sgt. Stephen Faber drew his gun.	§ 87(2)(b)
B.POM Kenneth Sepulveda	Abuse: PO Kenneth Sepulveda drew his gun.	§ 87(2)(b)
C.POM Timothy Rizzo	Abuse: PO Timothy Rizzo drew his gun.	§ 87(2)(b)
D.SGT Stephen Faber	Abuse: Sgt. Stephen Faber stopped § 87(2)(b)	§ 87(2)(b)
E.POM Kenneth Sepulveda	Abuse: PO Kenneth Sepulveda stopped § 87(2)(b)	§ 87(2)(b)
F.POM Timothy Rizzo	Abuse: PO Timothy Rizzo stopped § 87(2)(b)	§ 87(2)(b)
G.SGT Stephen Faber	Abuse: Sgt. Stephen Faber authorized the frisk of § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint online with the CCRB on March 13, 2015, on behalf of her husband, § 87(2)(b). § 87(2)(b) provided video footage of the incident from a security camera at her house (Board Review 01 -02). § 87(2)(b) recorded this security footage on her cellphone and copied it to a disk. She noted that the time stamp is incorrect in the video and reads an hour earlier than the actual incident time.

On March 12, 2015, at approximately 11:40 p.m., Sgt. Stephen Faber, PO Kenneth Sepulveda, and PO Timothy Rizzo of the 113th Precinct exited their black, unmarked Chevy Impala and allegedly approached § 87(2)(b) with their guns drawn in front of his home § 87(2)(b) in Queens (**Allegation A, B, and C**). These officers then stopped § 87(2)(b) and Sgt. Faber authorized a frisk of § 87(2)(b) (**Allegation D, E, F, and G**). The officers left the incident location without arresting § 87(2)(b) or issuing him a summons (Board Review 01-04).

Mediation, Civil and Criminal Histories

§ 87(2)(b) and § 87(2)(b) rejected mediation § 87(2)(b). As of March 24, 2015, § 87(2)(b) had not filed a notice of claim against the City of New York regarding this incident (Board Review 14). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

This is § 87(2)(b)'s first CCRB complaint. § 87(2)(b) has filed two prior complaints with the CCRB that were referred to outside agencies (Board Review 15 and 16).

Sgt. Faber has been a member of the NYPD for nine years and has been the subject of four prior complaints involving four allegations, none of which were substantiated. § 87(2)(g)

PO Sepulveda has been a member of the CCRB for seven years and has been the subject of one prior complaint involving six allegations, none of which were substantiated. Three of PO Sepulveda's prior allegations were for a stop, frisk, and search of a person. The stop was exonerated and the frisk and search were unsubstantiated. § 87(4-b) § 87(2)(g)

PO Rizzo has been a member of the NYPD for 10 years and has been the subject of eight prior complaints involving 21 allegations. Three allegations for a stop, frisk, and search of a person were substantiated against PO Rizzo. PO Rizzo has two other unsubstantiated allegations for a frisk and search of a person, respectively. § 87(4-b) § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

All officers who were interviewed either denied being present during the incident or did not recall the incident (Board Review 05-13), and there was no police documentation of the incident (Board Review 17-38 and 43). The video footage of the incident and the civilians' officer descriptions were unhelpful in identifying the subject officers. However, the subject officers were identified through the following investigative actions:

First, § 87(2)(b) and § 87(2)(b) reported that the subject officers rode in an unmarked, black Chevy with a license plate number beginning with “§ 87(2)(b)” (Board Review 03-04). The daily vehicle assignment sheet from the 113th Precinct listed five unmarked vehicles assigned to the precinct on the date of the incident (Board Review 29), and a request to Fleet Services revealed that one of these vehicles, RMP #445, was a black Chevy Impala with license plate number “§ 87(2)(e)” (Board Review 30). No other unmarked vehicle assigned to the 113th Precinct possessed a license plate number beginning with “§ 87(2)(e)” and the incident occurred within the confines of the 113th Precinct.

The 113th Precinct Roll Call for Tour 3 revealed that nine officers were assigned to plainclothes, anti-crime duties on the date of the incident: Sgt. Faber, PO Sepulveda, PO Rizzo, PO Joseph Algerio, PO Charles Lovelock, PO Derrick Coleman, PO Kraig Hunter, PO Timothy Rizzo, PO James Gherardi and PO Anthony Canale (Board Review 28). Memo books and MOS photos were requested for all of these officers, and memo book entries revealed that Sgt. Faber, PO Algerio, and PO Sepulveda were assigned to RMP #445 during the incident (Board Review 26-27 and 32). The unmarked vehicle utilization log also revealed that only PO Sepulveda worked as the operator for this vehicle during the incident (Board Review 37).

Upon interviewing these officers, it was revealed that PO Algerio arrested an individual prior to the incident and that the officers returned to the stationhouse to process the arrest at approximately 8:50 p.m. (Board Review 05-06 and 08). PO Algerio remained at the stationhouse to process the arrest for the remainder of his tour, and his memo book entry corroborated this (Board Review 08 and 32). PO Sepulveda acknowledged leaving the stationhouse at some point after 8:50 p.m., and he did not recall switching cars at any point (Board Review 06). Sgt. Faber could not recall leaving the stationhouse again after 8:50 p.m., and PO Algerio did not recall whether Sgt. Faber remained at the stationhouse with him to process the arrest (Board Review 05 and 08). Sgt. Faber did not recall whether he switched partners at any point during his tour, and he had no recollection of any actions he took after processing PO Algerio’s arrest at 8:50 p.m. (Board Review 05).

The investigation determined that Sgt. Faber and PO Sepulveda left the stationhouse with PO Rizzo in RMP # 445 sometime after 8:50 p.m., identifying them as the subject officers in this case. § 87(2)(g) every other officer denied being present during the incident and provided sufficient and credible explanations for their whereabouts (Board Review 08-13). Only Sgt. Faber, PO Sepulveda, and PO Rizzo failed to recall whether they were present during the incident, and they did not provide any alternative explanation for their whereabouts (Board Review 05-07). Sgt. Faber, PO Sepulveda, and PO Rizzo also match § 87(2)(b) and § 87(2)(b) s descriptions of the subject officers as white males in their 30s standing approximately 6’0” tall (Board Review 33-35).

PO Rizzo stated that he was assigned to anti-crime duties in the field on the date of the incident, § 87(2)(g) (Board Review 07). He initially stated that he was assigned to RMP #445 with PO Gherardi and that he did not switch cars or partners during his tour. PO Rizzo thought he worked with PO Gherardi during the incident because PO Gherardi was his usually partner, but he had no other reason for believing this. Upon being confronted with the fact that RMP #445 was used by the subject officers during the incident, PO Rizzo stated that he could have been assigned to a different vehicle but that he is normally assigned to RMP #445. PO Rizzo then stated that he may have worked with PO Sepulveda during his tour and that he may have switched partners at some point during his tour. PO Rizzo did not recall whether he left the stationhouse with PO Sepulveda

None of the subject officers recalled the incident even after viewing the video footage (Board Review 05-07). Sgt. Faber did not recall interacting with § 87(2)(b) during the incident, and he stated that neither he nor any other officer frisked § 87(2)(b) PO Rizzo also denied stopping or frisking § 87(2)(b) during the incident, and he stated that no other officer did so. PO Sepulveda did not recall stopping or frisking § 87(2)(b) and he did not recall whether any other officer he worked with did so.

According to *People v. DeBour*, reasonable suspicion of criminality is required for a stop, and an officer must have reasonable suspicion that he/she is in danger by virtue of the individual being armed in order to frisk that individual (Board Review 39).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date